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AMENDED IN ASSEMBLY MAY 23, 2002  
AMENDED IN ASSEMBLY MAY 8, 2002  
AMENDED IN ASSEMBLY APRIL 16, 2002  
AMENDED IN ASSEMBLY MARCH 19, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1823**

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**Introduced by Assembly Members Papan and Simitian**  
**(Coauthor: Assembly Members Alquist, Cohn, Corbett, Diaz,**  
**and ~~Dutra~~ Dutra, and Leach)**  
**(~~Coauthor: Senator Sher~~)**  
*(Coauthors: Senators Figueroa and Sher)*

January 18, 2002

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An act to add and repeal Division 20.5 (commencing with Section 73500) of the Water Code, relating to regional water systems.

LEGISLATIVE COUNSEL'S DIGEST

AB 1823, as amended, Papan. Regional water systems.

(1) Under existing law, the City and County of San Francisco (city) operates the Hetch Hetchy Project as a regional water delivery system, supplying water to persons and entities in the city and the Counties of Alameda, San Mateo, and Santa Clara.

This bill would enact the Wholesale Regional Water System Security and Reliability Act, which would impose various requirements on wholesale regional water systems, as defined, thereby imposing a

state-mandated program. The bill would require the city, by February 1, 2003, to adopt a capital improvement program. The bill would require the city, in consultation with other entities, to adopt an emergency response plan by September 1, 2003. The bill would require a regional wholesale water supplier, as defined, to distribute available water during any interruption to all customers on an equitable basis, to the extent feasible. The bill would require the city to continue its practice of operating reservoirs in the Counties of Tuolumne and Stanislaus in a manner that assigns higher priority to water delivery to the bay area than to electric power generation, unless the Secretary of the Interior notifies the city of a violation of federal law.

The bill would require the State Department of Health Services to conduct an audit relating to the bay area regional water system and an audit of other regional water systems. If the city and the bay area wholesale customers that are public agencies form a special district with authority to own, operate, and manage the bay area regional water system, the bill would impose the requirements of the act on that district instead of the city. The bill would require the State Department of Health Services to ensure that the bay area regional water system is operated in compliance with the California Safe Drinking Water Act, certain federal guidelines, and the act.

The bill would require the city to prepare various reports in connection with its operation of the bay area regional water system. The new requirements established by the bill for the city would impose a state-mandated local program. The bill would require a regional wholesale water supplier to reimburse the State Department of Health Services and the department for costs incurred in connection with implementing the requirements imposed by the act. The bill would require the bay area wholesale customers to reimburse the city for their share of costs. The bill would require wholesale customers of other regional wholesale water suppliers to be responsible for reimbursing the regional wholesale water supplier for the proportional share of costs through the imposition of water charges.

The bill would make these provisions inoperative on the earlier of two specified dates and would repeal these provisions on January 1 immediately following that earlier date.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.



This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. The Legislature hereby finds and declares as  
2 follows:

3 (a) The City and County of San Francisco has acquired or  
4 constructed a system of reservoirs, pipelines and tunnels, and  
5 treatment plants that provides water to 2.4 million Californians  
6 who live in San Francisco and in neighboring communities in the  
7 Counties of Alameda, San Mateo, and Santa Clara.

8 (b) Over two-thirds of the Californians who rely on San  
9 Francisco's regional water system, approximately 1.6 million  
10 persons, live outside San Francisco. A substantial majority of  
11 industrial, commercial, institutional, and governmental users are  
12 also located outside San Francisco.

13 (c) The reliability of this water infrastructure system is of vital  
14 importance to the health, welfare, safety, and economy of the  
15 region that it supplies.

16 (d) In turn, this region is of vital importance to the entire State  
17 of California, because of the resident industries, universities, and  
18 commercial enterprises that employ millions of Californians and  
19 generate billions of dollars in exports and tax revenues to the state.

20 (e) The regional water system is old, and designed to outdated  
21 seismic safety standards. The system either crosses, is located on,  
22 or is adjacent to, three major active earthquake faults, including the  
23 Calaveras fault, the San Andreas fault and the Hayward fault.  
24 Engineering investigations have disclosed that the system is at risk  
25 of catastrophic failure in a major earthquake. Many areas in all  
26 four counties served by the system face interruptions in their  
27 supplies of potable water for up to 30 days, and some areas could  
28 be without water for as long as 60 days.

29 (f) Interruptions in water supply of this magnitude and duration  
30 to a densely populated metropolitan region would be disastrous for  
31 public health and safety and for the regional and state economy. In  
32 addition, uncontrolled releases of water from pipelines, tunnels,  
33 and reservoirs could create severe flood damage and

1 environmental harm to fish and wildlife habitat in the communities  
2 in which water facilities are located.

3 (g) The City and County of San Francisco is not subject to  
4 oversight by the Public Utilities Commission in the operation of  
5 its water system. The substantial majority of Californians who rely  
6 on the system live outside the corporate limits of San Francisco  
7 and do not have the right to vote for the elected officials of San  
8 Francisco who manage, directly or by appointment, the regional  
9 water system.

10 (h) There are other aspects of the operation of the regional  
11 water system that unfairly disadvantage legitimate interests of  
12 Californians in neighboring counties. These neighboring counties  
13 face exposure to severe water shortages due to drought and are not  
14 assured of the delivery of water that meets federal and state  
15 drinking water standards. These uncertainties and risks discourage  
16 industry from investing in the neighboring counties because access  
17 to a reliable supply of potable, fairly priced water is an important  
18 element in plant location decisions.

19 (i) The state has concerns for the safety, health, and the  
20 economic strength of the region that warrant requiring San  
21 Francisco to take prudent steps in a timely manner to safeguard all  
22 Californians who live in the areas dependent on San Francisco's  
23 regional water system and to exercise stewardship over the system  
24 in a way that recognizes its regional nature and statewide  
25 importance.

26 (j) The state has similar concerns with any other regional water  
27 system that is owned and operated by a local governmental agency  
28 that is not subject to the jurisdiction of the state Public Utilities  
29 Commission and that furnishes water on a wholesale basis to  
30 substantial geographic areas outside its boundaries, the residents  
31 of which are not entitled to vote for the local elected officials who  
32 control the regional water system. Specific provisions of Division  
33 20.5 (commencing with Section 73500) of the Water Code, as  
34 added by this act, are intended to apply to any other regional  
35 wholesale water supplier that provides water to wholesale  
36 customers serving, in the aggregate, 1.5 million or more persons  
37 who are not residents of the regional wholesale water supplier.

38 SEC. 2. Division 20.5 (commencing with Section 73500) is  
39 added to the Water Code, to read:

40



DIVISION 20.5. WHOLESALE REGIONAL WATER  
SYSTEM SECURITY AND RELIABILITY ACT

73500. This division shall be known as and may be cited as the Wholesale Regional Water System Security and Reliability Act.

73501. (a) Unless the context otherwise requires, the definitions set forth in this section govern the construction of this division.

(b) “Association” means the San Francisco Bay Area Water Users Association.

(c) “Bay area regional water system” means the facilities for the storage, treatment, and transmission of water located in the Counties of Tuolumne, Stanislaus, San Joaquin, Alameda, Santa Clara, and San Mateo, together with three terminal reservoirs in the city.

(d) “Bay area wholesale customers” means the 26 public agencies in the Counties of San Mateo, Alameda, and Santa Clara that purchase water from the city pursuant to the master water sales contract, including the Alameda County Water District, the City of Brisbane, the City of Burlingame, the Coastside County Water District, the City of Daly City, the City of East Palo Alto, the Estero Municipal Improvement District, Guadalupe Valley Municipal Improvement District, City of Hayward, the Town of Hillsborough, the Los Trancos County Water District, the City of Menlo Park, the Mid-Peninsula Water District, the City of Millbrae, the City of Milpitas, the City of Mountain View, the North Coast County Water District, the City of Palo Alto, the Purissima Hills Water District, the City of Redwood City, the City of San Bruno, the City of San Jose, the City of Santa Clara, the Skyline County Water District, the City of Sunnyvale, and the Westborough Water District, Stanford University, the California Water Service Company, and the Cordilleras Mutual Water Association.

(e) “City” means the City and County of San Francisco.

(f) “Master water sales contract” means the agreement entitled “Settlement Agreement and Master Water Sales Contract between the City and County of San Francisco and Certain Suburban Purchasers” entered into in 1984 by the city and the wholesale customers.

(g) “Regional water system” means facilities for the storage, treatment, and transmission of water owned and operated by a regional wholesale water supplier, other than the city.

(h) “Regional wholesale water supplier” means any city, county, or city and county, including the city, that operates a regional water system, and furnishes water on a wholesale basis to local government agencies and public utilities that, in turn, supply water to a combined population of 1.5 million or more residents of geographic areas outside the boundary of the regional wholesale water supplier.

(i) “Wholesale customers” means local government agencies and public utilities, including, but not limited to, the bay area wholesale customers, that purchase water from a regional wholesale water supplier and distribute that water to retail customers in their respective service areas.

73502. (a) The city, on or before February 1, 2003, shall adopt the program of capital improvement projects designed to restore and improve the regional water system that are described in the capital improvement program report prepared by the San Francisco Public Utilities Commission dated ~~August 2001~~ *February 25, 2002*. A copy of the program shall be submitted, on or before March 1, 2003, to the State Department of Health Services. The program shall include a schedule for the completion of design and award of contract, and commencement and completion of construction of each described project. The schedule shall require that projects representing 50 percent of the total program cost be completed on or before 2010 and that projects representing 100 percent of the total program cost be completed on or before 2015. The program shall also contain a financing plan. The city shall review and update the program, as necessary, based on changes in the schedule set forth in the plan adopted pursuant to subdivision (d).

(b) The plan shall require completion of the following projects by the following dates:

	Project	Location	Completion Date
1			
2			
3	1. Irvington Tunnel Alternative	Alameda/Santa	May 2007
4		Clara Counties	
5	2. Crystal Springs Pump Station	San Mateo County	April 2011
6	& Pipeline		
7	3. BDPL 1 & 2—Repair of	Alameda/San	December 2006
8	Caissons/Pipe Bridge		
9		Mateo Counties	
10	4. BDPL Pipeline Upgrades at	Alameda County	November 2007
11	Hayward Fault		
12	5. Calaveras Fault Crossing	Alameda County	June 2009
13	Upgrade		
14	6. Crystal Springs Bypass Pipeline	San Mateo County	February 2008
15	7. BDPL Cross Connections 3 & 4	Alameda/Santa	October 2004
16		Clara Counties	
17	8. Conveyance Capacity West of	Alameda/Santa	October 2008
18	Irvington Tunnel	Clara/San Mateo	
19		Counties	
20	9. Calaveras Dam Seismic	Alameda County	July 2007
21	Improvements		

(c) The city shall submit a report to the Legislature and the State Department of Health Services, on or before February 1 of each year, showing the progress made on each of the projects included in the program during the previous calendar year.

(d) (1) The city may determine, based on the best interests of all ~~persons~~ *customers* served by the bay area regional water system, that completion dates for projects contained in the capital improvement program adopted pursuant to subdivision (a), including those projects described in subdivision (b), should be delayed or that different projects should be constructed.

(2) The city shall provide written notice, not less than 30 days prior to the date of a meeting of the city agency responsible for management of the bay area regional water system, that a change in the program is to be considered. The notice shall include information about the reason for the proposed change and the availability of materials related to the proposed change. All bay area wholesale customers shall be permitted to testify or otherwise submit comments at the meeting.



1 (3) If the city adopts a change in the program that deletes one  
2 or more projects or delays their scheduled completion dates, a bay  
3 area wholesale customer or the association may request the State  
4 Department of Health Services to review the city's decision. The  
5 request shall be in writing and delivered to the State Department  
6 of Health Services not later than 30 days after the date of the city's  
7 decision.

8 (e) Upon receiving a written request for review pursuant to  
9 subdivision (d), the State Department of Health Services shall hold  
10 a public hearing, not later than 90 days after the date of the receipt  
11 of the request, to review the city's decision. The State Department  
12 of Health Services shall provide not less than 30 days' prior written  
13 notice with regard to the date, time, and place of the hearing to the  
14 city and each of the bay area wholesale customers. Any interested  
15 person may submit written comments or oral testimony, or both,  
16 at the public hearing. Not later than 60 days after the date on which  
17 the public hearing ends, the State Director of Health Services shall  
18 issue a written decision with regard to the city's changes to the  
19 program. The director may approve, disapprove, or modify the  
20 changes. The State Department of Health Services shall enforce  
21 the city's adherence to the schedule and completion dates set forth  
22 in the director's decision.

23 73503. (a) The city, in consultation with the association and  
24 the offices of emergency services in Alameda County, Santa Clara  
25 County, and San Mateo County, shall prepare an emergency  
26 response plan describing how water service will be restored to the  
27 area served by the regional water system after an interruption  
28 caused by earthquake or other natural or manmade catastrophe. A  
29 draft of the plan shall be submitted to the Office of Emergency  
30 Services on or before July 1, 2003, for comment and shall be  
31 adopted by the city on or before September 1, 2003, and thereafter  
32 shall be implemented.

33 (b) During any interruption in supply caused by earthquake, or  
34 other natural or manmade catastrophe, a regional wholesale water  
35 supplier shall distribute water to customers on an equitable basis,  
36 to the extent feasible given physical damage to the regional water  
37 system, without preference or discrimination based on a  
38 customer's geographic location within or outside the boundary of  
39 the regional wholesale water supplier.



1 73504. (a) Commencing in 2003, a regional wholesale water  
2 supplier shall submit a report to the Legislature and the State  
3 Department of Health Services, on or before February 1 of each  
4 year, describing the progress made during the previous calendar  
5 year on securing supplemental sources of water to augment  
6 existing supplies during dry years.

7 (b) In order to supply adequately, dependably, and safely the  
8 requirements of all users of water, the city shall continue its  
9 practice of operating the reservoirs in the Counties of Tuolumne  
10 and Stanislaus in a manner that assigns higher priority to delivery  
11 of water to the bay area than to the generation of electric power,  
12 unless the Secretary of the Interior, in writing, notifies the city that  
13 doing so would violate the Raker Act (63 P.L. 41). The city shall  
14 make available to the public, on request, its plans of operations  
15 (rule curves) for these reservoirs.

16 (c) The city shall be deemed to be a local public agency for the  
17 purposes of Article 4 (commencing with Section 1810) of Chapter  
18 11 of Part 2 of Division 2.

19 73505. The State Department of Health Services shall  
20 conduct an audit, or arrange for an audit to be performed by  
21 contract, of the city's program of maintenance of the bay area  
22 regional water system during 2003 and during each odd-numbered  
23 year thereafter through 2009. The audit shall include both of the  
24 following:

25 (a) A review of the adequacy of the city's procedures and  
26 resources for all of the following:

27 (1) Identifying needed maintenance.

28 (2) Planning, budgeting, scheduling, and completing  
29 maintenance.

30 (3) Recordkeeping of maintenance activities.

31 (b) A field investigation of the major facilities of the bay area  
32 regional water system to determine the general condition of those  
33 facilities and the adequacy of existing maintenance efforts. The  
34 State Department of Health Services shall submit a report to the  
35 Legislature on its findings and recommendations based on the  
36 initial audit on or before February 1, 2004, and on or before  
37 February 1 of each even-numbered year thereafter through 2010.

38 73506. The State Department of Health Services shall  
39 conduct an audit of the regional water systems operated by all  
40 regional wholesale water suppliers, other than the city, subject to

1 this division and shall submit to the Legislature a report thereon on  
2 or before February 1, 2006.

3 73507. The cost allocation methodology established by the  
4 master water sales contract shall remain in effect unless and until  
5 the city and the bay area wholesale customers amend that contract  
6 or enter into a successor contract.

7 73508. If the city and the bay area wholesale customers that  
8 are public agencies form a special district with authority and  
9 responsibility to own, operate, and manage the bay area regional  
10 water system and whose governing board's composition reflects  
11 the proportionate use of water delivered by the bay area regional  
12 water system within the city and within the aggregate geographic  
13 area served by the bay area wholesale customers, the obligations  
14 imposed on the city by this division shall be applicable to that  
15 district. The city shall be relieved of all obligations under this  
16 division at the time the ownership and control of the bay area  
17 regional water system are transferred to that district.

18 73509. This division may be enforced by any wholesale  
19 customer.

20 73510. Notwithstanding Section 116500 of the Health and  
21 Safety Code, the State Department of Health Services shall ensure  
22 that the bay area regional water system is operated in compliance  
23 with the California Safe Drinking Water Act (Chapter 4  
24 (commencing with Section 116275) of Part 12 of Division 104 of  
25 the Health and Safety Code), the guidelines established by the  
26 United States Environmental Protection Agency for the purposes  
27 of administering the comparable provisions of the federal Safe  
28 Drinking Water Act (42 U.S.C. Sec. 300f et seq.), and this division.

29 73511. A special district composed of some or all of the bay  
30 area wholesale customers may receive state funds for the purpose  
31 of protecting the bay area regional water system against seismic  
32 risk, without regard to whether the city is a member of that district.

33 73512. A regional wholesale water supplier shall reimburse  
34 the state for all costs incurred by the State Department of Health  
35 Services or the department in carrying out the duties imposed by  
36 this division. The bay area wholesale customers shall reimburse  
37 the city for their share of those costs as provided in the master  
38 water sales contract. The wholesale customers of regional  
39 wholesale water suppliers other than the city are responsible for  
40 reimbursing the regional wholesale water supplier for their

1 proportionate share of those costs, through the imposition of water  
2 charges.

3 73513. Nothing in this division affects the rights and  
4 obligations of the city, the Modesto Irrigation District, or the  
5 Turlock Irrigation District, as between themselves, whether  
6 arising from statute or contract.

7 73514. This division shall become inoperative on the earlier  
8 of either of the following dates, and on January 1 immediately  
9 following that earlier date, is repealed:

10 ~~(a) The date on which both of the following apply:~~

11 ~~(1) The city has adopted a financing plan pursuant to Section~~  
12 ~~73502.~~

13 ~~(2) The voters of the city have approved a ballot measure~~  
14 ~~authorizing the issuance of revenue bonds and the increase of retail~~  
15 ~~water rates to pay for the debt service on those bonds for the~~  
16 ~~purposes of improving the reliability of the bay area regional water~~  
17 ~~system.~~

18 ~~(b) The date on which the city enters into a joint powers~~  
19 ~~agreement for the purposes of improving the reliability of the bay~~  
20 ~~area regional water system.~~

21 *(a) The date on which the State Director of Health Services*  
22 *notifies, in writing, the Chairperson of the Joint Legislative Audit*  
23 *Committee and certifies that the city has awarded contracts for*  
24 *construction of each of the projects described in subdivision (b) of*  
25 *Section 73502.*

26 *(b) December 31, 2010.*

27 SEC. 3. The provisions of this division are severable. If any  
28 provision of this division or its application is held invalid, that  
29 invalidity shall not affect other provisions or applications that can  
30 be given effect without the invalid provision or application.

31 SEC. 4. No reimbursement is required by this act pursuant to  
32 Section 6 of Article XIII B of the California Constitution because  
33 a local agency or school district has the authority to levy service  
34 charges, fees, or assessments sufficient to pay for the program or  
35 level of service mandated by this act, within the meaning of  
36 Section 17556 of the Government Code.